HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 1268 of 2001
(Old No. 1780 of 1974)

Harish Chandra
R/o village Banbasa, Parg, Tanakpur,
District- Nainital. ...Defendant-appellant.

Vs

Ram Chandra S/o Ram Lal
R/o Village Banbasa, Tehsil Khatima,
District Nainital. .....Respondent

Sri Rajendra Dobhal learned counsel for the appellant.
None respondent for the respondent.

Dated: -19-05-2006

Hon'ble B.S. Verma, J.

Photocopy of the order passed by the S.D.D./ Assistant Collector First Class, Khatima, District-Nainital is taken on record.

Heard Sri Rajendra Dobhal learned counsel for the appellant. None appear on behalf of respondents.

The present appeal has been filed by the appellant against the Judgment and decree dated 29-5-1974 passed by the learned Civil and Sessions Judge, Nainital in Civil Appeal No.90 of 1973 dismissing the appeal of the appellant and confirming the decree of the Munsif Nainital, dated 24-7-1973 in Civil Suit No.78 of 1972 whereby the suit for permanent injunction restraining their agents and servants from interfering in the peaceful possession of plaintiff over the over plots in suit was decreed with costs. However, if defendants or Sher Bahadur filed a suit for declaration and possession from the competent Court of law and gets the decree this decree shall become nullity.

The appellant Court has also dismissed the appeal. Learned counsel for the appellant has submitted that subsequent to that after passing the order by the Trial Court, Sher Bahadur had filed suit under Section 229 B of the **U.P. Z.A.L.R. Act.** The suit was decreed in view of the judgment passed by S.D.M/Assistant Collector First Class. Khatima, District- Nainital on

27.4.1981 in Revenue case No.221139/ 1979-80. The decree of the appellate Court had become nullity, in view of the order passed by the Trial Court, Munsif itself.

Therefore, the Second appeal was filed prior to the amendment under Section 100 of C.P.C., therefore, there is no need to formulate the substantial question of law prior to the amendment in C.P.C. which was effective from 1-2-1977.

In view of the judgment, the decree passed by the Trial Court as well as the appellate court stands nullified. The appeal has become infructuous and is dismissed as such.

(B.S. Verma,J)

Dated:- 19-5-2006
M.K.